IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DISTRICT

IN RE:	§	CASE NO. 02-46591-DML-11
	§	
Billy David Caraway, a/k/a	§	
David Caraway, a/k/a Billy D. Caraway and	§	
Angelia M. Caraway,	§	
	§	
Debtors.	§	
	§	
	§	
Billy David Caraway, a/k/a	§	ADVERSARY NO. 02-4248
David Caraway, a/k/a Billy D. Caraway and	§	
Angelia M. Caraway,	§	
	§	
Plaintiffs,	§	
	§	
v.	§	
	§	
United States Department of Agriculture,	§	
Farm Service Administration,	§	
	§	
Defendant.	§	

Memorandum Opinion Granting Partial Summary Judgment

By the above-captioned adversary proceeding, Plaintiffs seek to determine the validity and existence of Defendant's lien (the "Lien") against 1.5 acres of land and certain improvements thereon located in Decatur, Texas (the "Homestead"). Before the court is the motion for summary judgment (the "Motion") filed by Defendant. In making its decision, the court has considered the Motion, Plaintiffs' response to the Motion (the "Response"), Plaintiff's affidavits in support of the Response (the "Affidavits"), and all other relevant pleadings in this adversary proceeding (the "Pleadings", and, together with the Motion, the Response, and the Affidavits, the "Summary Judgment Evidence"). The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157(b)(2)(A) & (K).

I. Background

On or about May 27, 1976, Plaintiffs acquired the Homestead by warranty deed from the previous owners. Approximately one month later, Plaintiffs executed a builders and mechanics lien (the "B&M Lien") contract for the purpose of erecting improvements on the Homestead. Approximately ten years later, the obligations secured by the B&M Lien were satisfied. Plaintiffs contend that they have, at all times since erecting the improvements on the Homestead, openly and continuously lived on and used the property as their residential homestead.

On or about December 12, 1979, Plaintiffs executed a deed of trust in favor of the United States Department of Agriculture, FMHA, a predecessor in interest of Defendant, to obtain a loan in the amount of $44,000 (the "Loan"). Plaintiffs executed documents pledging the Homestead and a physically separate twenty-five acre tract (the "Back Forty") as security for the Loan. Proceeds from the Loan were used to erect a barn on the Back Forty. Subsequent to the erection of the barn, Plaintiffs sold the Back Forty, but apparently did not use the proceeds to pay off the Loan.

Plaintiffs have taken the position that the deed of trust and resulting Lien on the Homestead were void ab initio because they were granted as collateral or additional security in connection with the Loan, and not for purchase money, taxes, or improvements, as allowed by the then applicable state of the laws of the State of Texas. Additionally and alternatively, Plaintiffs assert that the debt claimed by Defendant (the "Debt") is barred by limitations. Through the adversary proceeding, Plaintiffs seek a declaratory judgment to the effect that the Lien is invalid and of no force or effect and that the Debt is barred by limitations and, therefore, is not capable of reduction to judgment.

Defendant filed the Motion, requesting that this court grant it summary judgment on the following four issues: 1) the Debt is not barred by the statute of limitations; 2) the Lien is not barred by the statute of limitations; 3) the Lien is valid; and 4) Plaintiffs' challenge to the Lien is barred by the statute of limitations.

II. Discussion

Summary judgment is proper when no genuine issue of material fact exists and the moving party is entitled to judgment as a matter of law.[1] It is appropriate only if "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any," when viewed in the light most favorable to the non-moving party, "show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law."[2] Summary judgment is inappropriate when conflicting inferences and interpretations may be drawn from the evidence.[3] A dispute about a material fact is "genuine" if the evidence is such that a reasonable jury could return a verdict for the non-moving party.[4]

In making its determination, the court must draw all justifiable inferences in favor of the non-moving party.[5] Once the moving party has initially shown "that there is an absence of evidence to support the nonmoving party's case,"[6] the non-movant must come forward, after adequate time for discovery, with significant probative evidence showing a triable issue of fact.[7]

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[1] FED.R.CIV.P. 56(c). Jenkins v. Chase Home Mortg. Corp., 81 F.3d 592, 595 (5th Cir. 1996).

[2] Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 247, 91 L. Ed. 2d 202, 106 S. Ct. 2505 (1986).

[3] Askanase v. Fatjo, 130 F.3d 657, 665 (5th Cir. 1997); James v. Sadler, 909 F.2d 834, 836-37 (5th Cir.1990).

[4] Anderson, 477 U.S. at 247.

[5] Id at 255.

[6] Celotex Corp. v. Catrett, 477 U.S. 317, 325, 91 L. Ed. 2d 265, 106 S. Ct. 2548 (1986).

[7] FED. R. CIV. P. 56(e); State Farm Life Ins. Co. v. Gutterman, 896 F.2d 116, 118 (5th Cir. 1990).

Conclusory allegations and denials, speculation, improbable inferences, unsubstantiated assertions, and legalistic argumentation are not adequate substitutes for specific facts showing that there is a genuine issue for trial.[8] To defeat a properly supported motion for summary judgment, the non-movant must present more than a mere scintilla of evidence.[9] Rather, the non-movant must present sufficient evidence upon which a jury could reasonably find in the non-movant's favor.[10]

A. Effect of Statute of Limitations on the Debt

The court first addresses whether the statute of limitations serves to bar the Debt. The Summary Judgment evidence indicates that the promissory note memorializing the Loan does not mature until 2019. The Summary Judgment Evidence is less clear with respect to when the Loan was accelerated. Both parties seem to agree that Defendant accelerated the Loan on January 25, 2002. In the Response, Plaintiffs represent that Defendant, in answering Plaintiff's interrogatories, stated that the Loan was previously accelerated on July 18, 1986, but that no further action was taken at that time due to an administrative freeze on the liquidation of accounts. Assuming, as the court must for purposes of summary judgment, that the facts are as stated by Plaintiffs, the court will look to July 18, 1986 as the date from which the statute of limitations (if any) ran.[11]

Assuming the foregoing, and applying the six-year statute of limitations set forth in 28 U.S.C. § 2415(a) (as suggested by Defendant in the Motion), the court cannot say there is no

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[8] Douglass v. United Servs. Auto. Ass'n, 79 F.3d 1415 (5th Cir. 1996) (en banc); SEC v. Recile, 10 F.3d 1093, 1097 (5th Cir. 1993).

[9] See Anderson, 477 U.S. at 251.

[10] Id.

[11] This assumption is, of course, without prejudice to Defendant proving otherwise in later proceedings (if necessary).

genuine issue of material fact or that Defendant is entitled to judgment as a matter of law that the Debt is not barred by the statute of limitations. The Motion is DENIED in this respect.

B. Effect of the Statute of Limitations on the Lien

The court next considers whether the Lien is barred by the statute of limitations. As a general rule, the United States is not subject to any statute of limitations unless it specifically and explicitly imposes one on itself. *See e.g. United States v. John Hancock Mut. Life Ins. Co.*, 364 U.S. 301, 81 S. Ct. 1 (1960); *Guaranty Trust Co. v. United States,* 304 U.S. 126, 58 S. Ct. 785 (1938). Further, where a party seeks to impose a statute of limitations *against* the United States, it is appropriate to interpret the implicated statute strictly and in favor of the United States. *E.I. Dupont de Nemours & Co. v. Davis*, 264 U.S. 456,462, 44 S. Ct. 364 (1924). *Accord Badaracco v. Commissioner*, 464 U.S. 386, 391, 104 S. Ct. 756 (1984).

Unlike actions for money damages based on a contract, liens are not specifically subject to the statute of limitations set forth in 28 U.S.C. § 2415(a). *See Farmers Home Admin. v. Muirhead*, 42 F.3d 964, 966-67 (5th Cir. 1995). In response to the Motion, Plaintiffs suggest that the instant controversy is distinguishable from the one faced by the Fifth Circuit in *Muirhead* because, unlike this case, the validity of the *Muirhead* lien was not challenged in the first instance. This is not persuasive. Plaintiffs' challenge to the validity of the Lien has no bearing on whether the United States has specifically and explicitly imposed a statute of limitations on itself with respect to enforcing liens. Regardless of whether the Lien is ultimately determined to be invalid or unenforceable, the statute of limitations does not preclude Defendant from asserting the Lien until such a determination is made. Since the instant portion of the Motion simply asks for a declaration that the Lien (whether valid or not) is not barred by the statute of limitations, the Motion is GRANTED in this respect.

C. Validity of the Lien

Defendant next asks the court to determine whether the Lien is valid as to the Homestead. To reach a conclusion on this issue, the court would first have to determine (at a minimum) whether the Homestead is a "rural" or "urban" homestead, as those terms are defined by TEX. PROP. CODE §41.002. As discussed at some length by this court in *In re Rodriguez*,[12] given the recent amendments to the Texas homestead statute, the determination of whether a particular homestead is rural or urban requires the court to consider myriad facts and factors, very few of which are before the court at this point. As a result of the fact-intensive nature of the required inquiry, the court cannot grant summary judgment that the Lien is valid. The Motion is, therefore, DENIED in this respect.

D. Effect of the Statute of Limitations on Plaintiffs' Challenge of the Lien

In the motion, Defendant asks this court to effectively quash Plaintiffs' adversary proceeding by finding Plaintiffs are precluded from challenging the Lien as a result of the six year statute of limitations found in 28 U.S.C. § 2401(a) (as implicated by 28 U.S.C. § 2410), which provides that "every civil action commenced against the United States shall be barred unless the complaint is filed within six years after the right of action first accrues." Defendant argues that Plaintiffs' cause of action (if any) with respect to the Lien first accrued on December 19, 1979 when Plaintiffs incurred the Debt and the Defendant's predecessor first asserted the Lien against the Homestead and the Back Forty. Defendant further argues that, because Plaintiffs failed to challenge the validity of the Lien prior to December 19, 1985, 28 U.S.C. § 2401(a) now bars any such challenge.

[12] 282 B.R. 194 (Bankr. N.D. Tex. 2002). It is not clear, nor does the court hold, that present § 41.002 would apply. If it does not, the factual analysis will be even more complicated.

While Defendant's argument is alluring, the court cannot ignore other relevant considerations. In a bankruptcy proceeding, state law generally determines the nature, extent, effect and validity of a lien. *See Bailey v. Big Sky Motors, Ltd. (In re Ogden)*, 314 F.3d 1190, 1200 (10th Cir. 2002); *Diament v. Kasparian (In re Southern Cal. Plastics)*, 165 F.3d 1243, 1248 (9th Cir. 1999); *In re Miller*, 58 B.R. 192, 195 (Bankr. S.D. Tex. 1985). Under Texas law, any attempt to mortgage homestead property, except as approved by the Texas Constitution, is void. *Burkhardt v. Lieberman*, 159 S.W.2d 847, 850 (Tex. Comm'n App. 1942, opinion adopted); *Anglin v. Cisco MortgageLoan Co.,* 135 Tex. 188, 193, 141 S.W.2d 935, 937 (Tex. 1940); *Toler v. Fertitta*, 67 S.W.2d 229, 230-31 (Tex. Comm'n App. 1934, judgm't adopted). Further, a mortgage or lien that is void because it was illegally levied against homestead property can never have any effect, even after the property is no longer impressed with the homestead character. *Toler*, 67 S.W.2d at 230-31.

Assuming, *arguendo*, that the Lien was improperly levied against the Homestead, under Texas law it would be void and of no effect. If the court were to adopt Defendant's position, however, the Lien, even though void and incapable of effect, would be transformed into an enforceable encumbrance against the Homestead, notwithstanding a direct and unequivocal state law mandate to the contrary. The court has grave reservations about taking such a step on a summary judgment basis, and believes the better course of action is to allow Defendant and Plaintiffs to join issue on whether the Lien was validly levied and whether it currently encumbers the Homestead. Accordingly, the Motion is DENIED in this respect.

III. Conclusion

The Motion is GRANTED as set forth herein.

The Motion is in all other respects DENIED.

Signed this 24 day of March 2003.

DENNIS MICHAEL LYNN
UNITED STATES BANKRUPTCY JUDGE